



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 3, 2001

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Robert Raben 
Assistant Attorney General

SUBJECT: Weekly Report for January 2, 2001 - January 5, 2001

The House and the Senate convened the 107th Congress on January 3, 2001.

THE WEEK AHEAD

106th Congress Oversight Matters: Using the oversight database that was created during the past year to track incoming and outgoing correspondence, document productions, and briefings between the Department and Congress, we have worked to close out as many pending items as possible before January 20. We briefed you on December 28 on the status of items that remain open and are working, based on your guidance, to close those items as soon as possible. (Walter)

Santo Daime Church: Representatives of the Criminal, Civil, Environment and Natural Resources and Civil Rights Divisions, OTJ, OPD, OLC, DEA, EOUSA Districts of New Mexico and Oregon, OLA, ONDCP, and the Departments of State, Treasury and Health and Human Services met on January 3, 2001, with Michael Greenberger, Principal Deputy Associate Attorney General, chairing the meeting, in a continuing effort to develop an appropriate response to claims raised by representatives of the Santo Daime Church that their use of a "tea" in religious ceremonies of the church is permissible under the Religious Freedom Restoration Act (RFRA) of 1993. The tea contains DMT, a schedule I controlled substance. RFRA continues to apply to federal government functions. We have received comments and inquiries on this issue from Senators Hatch, Kennedy and Smith, and from Representative DeFazio. (Tanner)

Wen Ho Lee: Draft responses to questions for the record from Senator Leahy, in follow up of the September 26 and 27 hearings, are being prepared by the Criminal Division. A draft response to the Intelligence Committees and the Senate Judiciary Committee on conditions of confinement is being finalized in consultation with the Marshals Service. Responses to document requests for sealed records and deliberative materials have been deferred while activities related to open matters in the case continue; Committee staff have been informed of this. Senator Specter's staff have requested access to the underlying documents used to prepare the Bellows report. Declassification of the Bellows report remains pending at FBI. Further hearings, if any, will not occur until after January 20. (Walter)

GAO Review of Offices of Professional Responsibility: Senator Thurmond, as Chairman of the Senate Judiciary Subcommittee on Criminal Justice Oversight, asked the General Accounting Office (GAO) to conduct a review of the operations and policies in the Offices of Professional Responsibility (OPR) at both the FBI and Main Justice, focusing on OPR activities pertaining to a pending criminal investigation in Boston. We have advised the Subcommittee staff that the OPR report on the matter is under seal by the Court in Boston and that the reasons for the seal, which pertain to the pending criminal investigation, remain. We have furnished GAO staff with publicly available documents about the investigation, including indictments and judicial opinions in related cases, which we hope will assist them in persuading the Subcommittee to hold off on the inquiry at this time. (Burton)

FOIA EXEMPTION (b)5

FOIA Request Regarding Our Communications with the House Ethics Committee: We have been notified that congressional periodical, Roll Call, has requested DOJ records, including OLA attorney notes, regarding our communications with the House Ethics Committee over the past two years about a pending criminal investigation in Boston and a related investigation of the House Ethics Committee about Congressman Bud Shuster. [REDACTED]

[REDACTED] On December 6, 2000, we reviewed the relevant documents with staff from the Office of Information and Privacy with particular reference to how FOIA applies to them. We have now advised Committee staff of our conclusions and, on January 3, 2001, they reported that they have no objection to our proposed release of the documents. (Burton)

Application of the Privacy Act to Committee Hearing Disclosures: Chairman Sensenbrenner of the House Science Committee has requested the Department's view on whether the Privacy Act exception at 5 U.S.C. 552a(b)(9) permits disclosures of information covered by the Act in open Congressional committee hearings, whether the disclosure would necessarily reach the public. This issue arose in the context of a Committee hearing involving an EPA witness because the EPA General Counsel opined that such a disclosure was not authorized by the (b)(9) exception. The question is under review within the Department at this point and we will respond to the Chairman as soon as possible. (Burton)

THE WEEK IN REVIEW

Nominations: On December 27, the President recess appointed Roger Gregory to the Fourth Circuit Court of Appeals. Timothy Earl Jones, Sr., was recess appointed as a Parole Commissioner on December 28. The President recess appointed John Lacey on January 2, 2001, as Chair of the Foreign Claims Settlement Commission and Laramie Faith McNamara on January 3, 2001, as a Member. (Scott-Finan)

Leak prosecutions: Senator Shelby dropped his attempt to include the leak prosecution provision in the renewed attempt to pass the Intelligence Authorization bill for 2001. The bill, without the leak provision, has passed both the Senate and House and was signed by the President on December 27. Senator Shelby intends to pursue a leak prosecution statute again in the next Congress. (Walter)

Security Incidents: On December 13, 2000, JMD and OLA representatives met with staff from the House Judiciary Committee about follow up questions from the September 21 hearing about the Inspector General's Report on misconduct and mismanagement at ICITAP, OPDAT and the Criminal Division's Office of Administration. Our answer to one of the follow up questions indicated that there had been 53 compromises of classified information under the Department's control over the past six years. In fact, as we explained to staff in the meeting, there have been 53 instances during that period in which Department personnel failed to comply with the rules and regulations regarding the handling of classified information, but only a small fraction of those involved any probable compromise of the information. While the Committee's hearing record with our original answer has already been printed, we prepared a supplemental letter to the Committee clarifying the relevant facts, which both the Department and the Committee can disclose in response to any press inquiries that may ensue following disclosure of the hearing record. (Burton)